

MEMORANDUM
Fair Political Practices Commission

To: Chairman Getman and Commissioners Downey, Knox, Scott and Swanson

From: Carla Wardlow, Chief, Technical Assistance Division
Luisa Menchaca, General Counsel

Re: Proposition 34 Regulations: Transfer and Attribution (§85306)—Repeal of Emergency Regulation 18536 and Adoption of Regulation 18536; Reporting of Transferred Funds on Special Reports

Date: September 24, 2001

Background

The Commission adopted Regulation 18536 on an emergency basis at the July meeting. The regulation establishes procedures for state candidates to comply with section 85306(a) when funds are transferred from one of a candidate's controlled campaign committees to another. Section 85306(a) provides:

“A candidate may transfer campaign funds from one controlled committee to a controlled committee for elective state office of the same candidate. Contributions transferred shall be attributed to specific contributors using a ‘last in, first out’ or ‘first in, first out’ accounting method, and these attributed contributions when aggregated with all other contributions from the same contributor may not exceed the limits set forth in Section 85301 or 85302.”

Repeal and Adoption of Regulation 18536

Emergency Regulation 18536 will expire on November 15, 2001. Because staff is proposing some changes to the regulation, which are outlined below, we are recommending that the Commission repeal the emergency regulation and adopt the revised version of the regulation. (See Attachment A.) This version has been noticed for permanent adoption at the October 11 meeting.

Proposed Regulation 18536 contains the following changes from Emergency Regulation 18536:

Subdivision (e)

Recipient committees defined in Government Code section 82013 are assigned an identification number by the Secretary of State. The identification number must be disclosed whenever the committee is required to be identified on a campaign statement. Subdivision (e) of the regulation requires that contributors to whom transferred funds are being attributed be disclosed in detail on the receiving committee's campaign statement. Proposed subdivision (e) contains the following change to require that the committee disclose the identification number assigned to any other committee to whom transferred funds are being attributed.

(e) A committee receiving transferred funds must disclose on its campaign statements each attributed contribution of one hundred dollars (\$100) or more, providing the same information required by subdivision (f) and, if applicable, subdivision (m) of Government Code section 84211 as disclosed on the campaign statement on which the contribution was originally reported or as contained in the committee's records at the time of the transfer.

Subdivision (g)

A new subdivision (g) has been added providing that committees will not be in violation of the Act if they receive a contribution which would bring a contributor's total contributions over the limits when aggregated with transferred funds previously attributed to that contributor. The committee must return the contribution as provided in Regulation 18531, which sets out procedures for returning contributions that exceed the contribution limits.

(g) A candidate or committee that receives a contribution which, when aggregated with contributions attributed to the same contributor, would otherwise constitute a violation of Government Code section 85301 or 85302, shall not be in violation of either of those sections provided the contribution is returned pursuant to 2 Cal. Code Regs. section 18531.

Subdivision (h)

A new subdivision (h) has been added to protect the contributor who unknowingly makes a contribution over the limits because funds previously transferred to the receiving committee have been attributed to the contributor.

(h) A contributor that makes a contribution which, when aggregated with contributions attributed to the same contributor, would otherwise be in violation of Government Code section 85301 or 85302, shall not be in violation of either of those sections unless the contributor was aware of the attribution at the time the contribution was made.

Decision 1: Staff recommends that the Commission repeal Emergency Regulation 18536 and adopt proposed Regulation 18536.

Reporting of Transferred Funds on Special Reports

When Emergency Regulation 18536 was adopted, the Commission approved a method for reporting attributed funds on Schedule A of the Form 460 (Recipient Committee Campaign Statement). Schedule A is used to report monetary contributions received by a candidate or committee. (See Attachment B.)

A question has been raised whether transfer and attribution information is required to be disclosed on other types of reports candidates are required to file under the Act, including:

- ◆ \$5,000 and \$1,000 Electronic Reports. These reports, which were added to the Act by Proposition 34 and SB 34, require state candidates to electronically disclose contributions received. The \$5,000 report must be filed within 10 business days of receiving a contribution of \$5,000 or more at any time other than the 90-day election cycle preceding an election, at which time the reporting threshold is lowered to \$1,000. The \$1,000 report must be filed within 24 hours of receiving a contribution of \$1,000 or more. (Section 85309.)
- ◆ Late Contribution Reports. These reports are required during the last 16 days before an election to identify “late contributions” totaling \$1,000 or more received by a candidate since the last regular campaign report filed before the election. The late contribution report must be filed within 24 hours of receiving a late contribution. (Sections 82036 and 84203.)
- ◆ Late Independent Expenditure Reports. These reports are filed within 24 hours by committees that make independent expenditures to support or oppose candidates or ballot measures during the last 16 days before they will be voted on. The late independent expenditure report must identify contributions of \$100 or more received during the late period as well as the independent expenditures made. (Sections 82036.5 and 84204.) Although state candidates are prohibited from making independent expenditures to support or oppose other candidates (section 85501), a state candidate conceivably could transfer funds to his or her campaign committee from another controlled committee during the late reporting period and make an independent expenditure to support or oppose a ballot measure.

The purpose of the \$5,000, \$1,000, and late contribution reports is to provide timely information to the public about who is providing financial support to a candidate during the course of the campaign. In the case of late independent expenditures, the purpose for disclosing contributions on the late independent expenditure report is to identify who is attempting to influence the outcome of an election by funding last-minute independent expenditures. All of the information disclosed on these reports must be disclosed again on the next Form 460 filed by the candidate. For example, except for the 16-day late reporting period, all of the contributions that have been electronically reported during the 90-day election cycle under section 85309 will be disclosed again on Form 460 pre-election statements filed in connection with the election. Late contributions and late independent expenditures will be disclosed on the semi-annual Form 460 filed after the election.

Transfers between a candidate's controlled committees have not been treated as contributions in the past and have not triggered the filing of late reports. A committee receiving transferred funds simply reports a lump sum amount on Form 460 Schedule I (Miscellaneous Increases to Cash). Under Proposition 73, transfers to a special election committee were required to be attributed to specific contributors using a method similar to that set out in Emergency Regulation 18536.¹ However, the transfer itself was reported as a lump sum on Schedule I and detailed disclosure of the contributors was made on a separate form titled Attachment Schedule A-1. The funds were not treated as contributions for any other purpose.

In developing the method for disclosing transfer and attribution information under Proposition 34, staff proposed using Schedule A for the sole purpose of making the fewest changes possible to the Form 460 and the state's electronic filing program. In fact, staff had not planned to disallow the Schedule I method of reporting transfers when attribution is not required under section 85306(a) (e.g., transfers between local committees and transfers of funds held by a state candidate on January 1, 2001).

Clearly, the Commission felt there was value in requiring disclosure of attributed funds when Emergency Regulation 18536 was adopted. Disclosure of transfer and attribution information on the special reports will provide timely information to the public about the amount and original source of money candidates are transferring to their current election campaigns, and this may be of some interest.

However, section 85306(a) treats transferred funds as contributions only for purposes of the contribution limits. No campaign reporting sections were added or amended relating to transfers and attribution. Moreover, the "per election" totals added to the Form 460 are not included on the special reports and, thus, the special reports cannot be used for purposes of tracking contribution limits. This likely will cause confusion for the public.

¹ Regulation 18535, which was repealed by the Commission earlier this year, established procedures for attributing transferred funds to a special election committee.

Without the per election information, it may appear that “attributed contributors” are making new contributions which count for purposes of the contributors’ disclosure requirements. For example, if a candidate attributes transferred funds to a labor union committee that made a contribution to the transferring committee in 1999, it may lead to an erroneous conclusion that the labor union committee also should disclose the contribution on its current reports.

Decision 2: Staff seeks guidance from the Commission whether the language of section 85306(a) and the Commission’s decision to have transfer and attribution information disclosed on Schedule A of Form 460 have transformed attributed funds into contributions for purposes of these special reports. Staff recommends that transfer and attribution information not be required on the special reports.

If the Commission determines that transfer and attribution information must be disclosed on the special reports, is the \$5,000, \$1,000, or late contribution report triggered by the transfer itself, or by the amount being attributed to a particular contributor?² For example, if the Smith for Council Committee transfers \$10,000 to the Smith for Assembly Committee during the 90-day election cycle, is the \$1,000 electronic report triggered automatically, or only if \$1,000 or more of the transfer is attributed to a single contributor? Requiring disclosure based on the amount of the transfer will result in disclosure of additional, perhaps extraneous information (i.e., attributed contributors of \$100 or more) on the special reports.

Decision 3: If the Commission determines that transfer and attribution information must be disclosed on the special reports, which transaction will trigger reporting? Staff recommends that a report be required only if \$1,000 or more is attributed to a specific contributor.

Attachment A—Emergency Regulation 18536 and Proposed Regulation 18536
Attachment B—Schedule A, Form 460

² The late independent expenditure report is not affected by this decision because the report is triggered by the amount expended by the committee, rather than the amount received. (Sections 82036.5; 84204.)